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09/597,318	06/19/2000	Frank Venegas JR.	IDS-10505/14	4057

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EXAMINER

YIP, WINNIE S

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 03/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/597,318

Applicant(s)
Frank Venegas, Jr.

Examiner
Winnie Yip

Art Unit
3635



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 31, 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 and 6
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

Art Unit: 3635

Part III DETAILED ACTION

This office action is in response to applicant's amendment filed on December 31, 2001.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 U.S.C. § 112

1. Claims 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 5 and 6, the claimed language "nothing else is required to retain said cover on said stanchion" merely recites a negative structural limitation which causes the claims vague and indefinite.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 3635

3. Claims 1-6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,4-5, 14, and 17 of U. S. Patent No. 5,2353,583. Although the conflicting claims are not identical, they are not patentably distinct of the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: an elongated member and a sleeve with interior cavity to be slip fitted to the elongated member.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See also MPEP § 804.

Claim Rejections - 35 U.S.C. § 102

4. Claims 1-2 and 4-5 stand rejected under 35 U.S.C. 102(b) as being anticipated by Deike (US patent No. 4,021,977).

Deike shows and discloses a stanchion and cover assembly comprising a substantially rigid elongated stanchion (12) having a lower end being secured to a fixed anchor (11) which is fixed into the ground and a upper terminal end extending over the ground, a sleeve (13) made of plastic and having an elongated, generally cylindrical body extending between two opposing ends, the sleeve having a generally cylindrical interior cavity, the opposing ends including an opened lower end to receive the elongated member (120, and a closed second end with a closed hemispherically shaped cap (15), the sleeve (13) having a length slightly longer than the height of the upper

Art Unit: 3635

portion of the stanchion, and the interior cavity having a cross-sectional shape being slip fitted in an engagement with the upper portion of the elongated stanchion(13).

In regard to claim 2, Deike disclose the sleeve being elastically slip fitted onto the stanchion inherently by suitable force.

5. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Kervin (US patent No. 2,450,345).

Kervin shows and discloses a cover for a substantially rigid elongated generally cylindrical stanchion, said cover consisting of a sleeve having a generally cylindrical elongated body (15) having an opened end and a closed opposing end, the closed opposing end (16) having a generally hemispherically domed top, and a generally cylindrical interior cavity extending between the two opposing ends without any inwardly extending protrusion, the interior cavity having a cross-sectional shape being capable to receive the stanchion in slip fitted in an engagement, and the sleeve and the domed top being made from a plastic material and having substantially the same wall thickness.

Claim Rejections - 35 U.S.C. § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3635

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almond (US patent No.4,972,864) in view of Arth, Jr.'883.

Almond shows and discloses a stanchion and cover assembly comprising a substantially rigid elongated stanchion (12) having a first end being secured the ground and a second end extending over the ground, the rigid elongated stanchion (12) having a shank (22) may be generally cylindrical shaped (see Fig. 3), a sleeve (25) having a generally cylindrical elongated body having an opened end and a opposing closed end, and a generally cylindrical interior cavity extending between the two opposing ends, and the sleeve and the closed end of the sleeve being molded from a plastic material and having substantially the same wall thickness, wherein the interior cavity of the sleeve has a cross-sectional shape being elastically slip fitted in an engagement with the upper portion of the stanchion inherently by suitable forced such that the sleeve forming a cover being retained over on the stanchion without any additional structural element. Although Almond does not define the closed end of the sleeve having a generally hemispherically shaped dome top, Arth, Jr. teaches, as well known in the art, a protective cover (18) covering an elongated stanchion (16), the cover formed with a closed, hemispherically shaped dome top (20) with a same shaped internal surface for increasing durability of the cover with a smooth outer surface (see col. 3, lines 43-45 and 49-51). It would have been obvious to one of ordinary skill in the art at time the invention was made to modify the cover of Almond's

Art Unit: 3635

assembly having a generally hemispherically shaped dome enclosed top as taught by Arth, Jr. as well known in the art, for the purpose of providing a durable and smooth protective cover.

8. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beatty (US patent No 4,516,756) in view of Arth, Jr. '883.

Beatty shows and discloses a stanchion and cover assembly comprising a substantially rigid elongated stanchion (12) having a first end being secured the ground and a second end extending over the ground, the rigid elongated stanchion (12) may have a generally cylindrical shaped (see Fig. 3), a sleeve (18) having a generally cylindrical elongated body having an opened end and a opposing closed end, and a generally cylindrical interior cavity extending between the two opposing ends, and the sleeve and the closed end of the sleeve being molded from a plastic material and having substantially the same wall thickness, wherein the interior cavity of the sleeve (18) has a cross-sectional shape being elastically slip fitted in an engagement with the upper portion of the stanchion (see col. 2, line 19), said the sleeve forming a cover being retained over on the stanchion without any additional structural element. Wherein, the closed end of the sleeve may be formed in variety shapes to receive the stanchion (see Figs. 1 and 3). Although Beatty does not define the closed end of the sleeve having a generally hemispherically shaped dome top as claimed, Arth, Jr. teaches, as well known in the art, a protective cover (18) for covering an elongated stanchion (16), the cover formed with a closed, hemispherically shaped dome top (20) having a same shaped internal surface for increasing durability of the cover with a smooth outer

Art Unit: 3635

surface (see col. 3, lines 43-45 and 49-51). It would have been obvious to one of ordinary skill in the art at time the invention was made to modify the cover of Beatty's assembly having a generally hemispherically shaped dome enclosed top as taught by Arth, Jr. as well known in the art, for the purpose of providing a durable and smooth protective cover.

Response to Amendment

9. Applicant's arguments filed November 16, 1998 have been fully considered but they are not deemed to be persuasive.

The claims 1-6 stand rejected under obviousness double patenting since applicant does not provide any response thereto.

Applicant's arguments with respect to claims 1-2 under U.S.C. 102 to Arth, Jr and Meister et al. are deemed to be moot in view of applicant's amendment and the new grounds of rejection.

In response to applicant's argument that the Deike fails to have additional element, a reflector, which is not required by the claimed invention, however, in claim 1, applicant only claims a sleeve it self. The reflector (15) in Deike's assembly is located outside of the sleeve (13) which as a enclosed dome shaped cap (13a) (see col. 3, lines 24-25). Therefore, the reflector (15) is considered to be a element outside of the sleeve and stanchion, but not an elements of the sleeve. Further, applicant argues that claim 4 provides that the stanchion and sleeve having approximately the same length, unlike any embodiment to Deike. However, applicant claims "said length of said sleeve being ... or slightly longer than the height of said stanchion". As discussion set forth rejection, Deike's sleeve is considered "slightly longer" as

Art Unit: 3635

claimed. Therefore, Deike's assembly is considered to be read on the claimed invention. The rejection is deemed proper.

ACTION IS FINAL

10. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Yip whose telephone number is (703) 308-2491. The examiner can normally be reached on Mondays through Friday from 9:30 AM to 6:00 PM.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113. The fax phone number for this Group is (703)305-7687.



wsy

March 14, 2002



Carl D. Friedman
Supervisory Patent Examiner
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